

### **REMARKS**

The examiner rejected claim 27 under 35 U.S.C. 101 as being directed to non-statutory subject matter; claims 2, 3, 5, 8, 9, 11-15, 17, 19, 21, 24, and 26 under 35 U.S.C. 112, second paragraph, as being indefinite; and claims 1-9 and 11-26 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,630,775 to Winkler.

Prior to the present amendment, claims 1-27 were pending. In this amendment, claims 1-3, 5, 8-15, 17, 19, 21, 24, and 26 have been amended; claim 27 has been cancelled; and new claims 28-40 were added. Accordingly, claims 1-26 and 28-40 are under examination.

Support for the amendment to claim 1 can be found in the specification as filed on page 3, lines 7-8. Support for new claims 28-40 can be found in the subject matter of claims 1-26 as originally filed.

### **THE INVENTION**

The invention relates to a method for preparing a starch product wherein an aqueous starch mixture is provided with an amylose content of greater than 5 wt. % and less than 50 wt. % based on the dry substance and the starch is heated to a temperature of at least 170 °C. The invention also relates to the starch product obtainable by the method, a foodstuff containing the starch, and a film including a starch produced by the method.

### **ALLOWABLE SUBJECT MATTER**

The examiner indicated that claim 10 would be allowable if rewritten or amended to overcome the 35 U.S.C. 112, second paragraph, rejection. The examiner states that the prior art fails to teach or suggest cooling the heated starch of claim 1 to 10-40 °C before drying.

Accordingly, applicants have added new claim 40, which is claim 10 rewritten in independent form and amended to overcome the rejection based upon the use of the word “optionally.”

Applicants sincerely thank the examiner for his indication of allowable subject matter. Applicants respectfully request that new claim 40 be allowed.

#### **REJECTIONS UNDER 35 USC § 112**

The examiner rejected claims 2, 3, 5, 8, 9, 11-15, 17, 19, 21, 24, and 26 under 35 U.S.C. 112, second paragraph, as being indefinite. The examiner stated that the phrases “preferably,” “substantial,” “essentially,” “in a continuous way,” “rubber-like,” “at least,” and “SEC-MALLS-R1” are unclear.

Accordingly, applicants have amended the claims to remove the indefinite language. Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. 112, second paragraph, rejections.

#### **REJECTIONS UNDER 35 USC § 102**

Claims 1-9 and 11-26 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,630,775 to Winkler. According to the examiner, Winkler disclose in Example 1 a continuous method of treating a slurry of water and waxy milo (cereal) starch with 5-45% amylose content and a molecular weight within that of claim 24 by heating it to about 185 °C and drying it using spray drying.

Contrary to the examiner’s assertion, Winkler does not disclose the amylose content of waxy milo starch. In particular, waxy milo starch contains 100% amylopectin. Therefore, waxy milo starch contains 0% amylose. According to The Handbook of Cereal Science and Technology (ed. Lorenz and Kulp, 1991 on page 237, 4<sup>th</sup> paragraph) waxy or glutinous sorghum contains starch with 100% amylopectin. (The Handbook of Cereal Science and Technology pages 233-238 is submitted herewith in a Supplemental

Information Disclosure Statement (SIDS).) Sorghum is another name for milo. See the title of Grain Sorghum (Milo) Production Guidelines May 2000 submitted herewith in a SIDS. Therefore waxy milo starch contains 100% amylopectin and 0% amylose.

The claims require that the starch contain 5 wt. % to 50 wt. % amylose. Therefore, the Winkler reference which discloses waxy milo starch, which contains 0% amylose, does anticipate the claimed invention. Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection.

Applicants respectfully submit that the application is now in proper form for allowance, which action is earnestly solicited. If resolution of any remaining issue is required prior to allowance of the application, it is respectfully requested that the examiner contact applicants' attorney at the telephone number provided below.

Respectfully submitted,

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